



# ARBITRATION AWARD

Panelist/s: Joseph Mphaphuli  
Case No.: PSHS365-10/11  
Date of Award: 27-Nov-2011

In the ARBITRATION between:

Brett Purdon Attorneys obo Sukai R.J  
(Union/ Applicant)

And

Department of Health – Kwazulu Natal  
(Respondent)

Applicant's Representative: Mr. Ntshangase

Applicant's Address: \_\_\_\_\_

Telephone: 031 201 4100

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Respondent's Representative: Mrs. Moodley

Respondent's Address: \_\_\_\_\_

Telephone: 033 395 2219

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## **DETAILS OF HEARING AND REPRESENTATIONS**

The award follows an arbitration hearing held in terms of Section 191 of the Labour Relations Act 66/1995 as amended.

The hearing took place at the Respondent's premises in Pietermaritzburg on 24 November 2011.

Present were Mr. Ntshangase Assistant manager Labour Relations in the service of the Respondent on behalf of the Respondent. Mrs. Moodley an Attorney appeared on behalf of the Applicant.

The proceedings were digitally recorded.

## **ISSUE IN DISPUTE**

Whether the dismissal was for a fair reason and was effected in accordance with a fair procedure as contemplated by Section 188 and Schedule 8 of the Act, if not, what remedy was appropriate.

## **BACKGROUND TO THE DISPUTE**

The Applicant commenced employment on 02 January 2008. The Applicant served in the capacity of Supervisor Asset Manager. The Applicant was remunerated at R 12 000.00 per month. His alleged dismissal took place on 31 January 2011. The Applicant did not know the reason for his alleged dismissal.

The Applicant Party favoured compensation in the event of a successful application.

## **SURVEY OF EVIDENCE AND ARGUMENT**

The Applicant took oath and testified: He initially served as an intern for the period 02 January 2008 to 31 May 2009. He met with his manager at the expiration of the internship and was offered a month to month contract as an intern. He reported to Thabile Khumalo during the final phase of his employment.

He learned from Ruth Dube, Training Co-ordinator that he would be employed permanently at the end of the internship. The internship was due to end on 31 May 2009.

From the 1<sup>st</sup> June 2009 he was engaged on a month to month basis to the date when his services were terminated.

The Respondent served him notice of termination of employment in November 2009. Following the notice the Respondent invited him to a meeting where together with other interns they were assured by Mrs. Naidoo, Acting General Manager that some of the interns would be retained permanently.

The meeting was held in January 2010. He later received a telephone call from Mrs. Khumalo during the month of February 2010. Mrs. Khumalo offered him employment at a lower level and at a reduced pay rate. He declined the offer.

Miss Khumalo, Deputy Manager in the service of the Respondent gave evidence. The Applicant was seconded by Pronel, a consulting agent to the Department of Health. The Applicant was directly employed by Pronel, a temporary employment service. The Department of Health was a client of Pronel. The Applicant was paid his salary by Pronel.

The Applicant reported directly to her as the Supply Chain Manager.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

The factors herein below mentioned were common cause factors.

The Applicant ordinarily executed duties at the Respondent's premises. The Applicant was however employed by Pronel Personnel Consultants. Pronel Personnel Consultants was liable to pay for the Applicant's services as the employer party.

The Applicant's testimony in brief was that the Department of Health has given him legitimate expectation for continued employment in that:

- He was informed by Miss Khumalo that he would be employed permanently at the expiration of his contract.
- Miss Khumalo offered him permanent employment at the end of his contract in January 2010. He declined the offer because it was on less favourable terms.
- Mrs. Naidoo had also made a similar undertaking.

Miss Khumalo's response was that her role was simply to supervise the Applicant. It was not her place to appoint employees or to even make pronouncement on job availability within the

Department. To the best of her knowledge the Applicant was employed by Pronel Personnel Consultants.

The discipline, employment relations management defines an employment relationship as a relationship between:

- a) The person placing his labour or services at the disposal of;
- b) An employer and against remuneration.

This relationship subsisted between the Applicant and Pronel Personnel Consultants to the exclusion of the Department of Health.

The provision of Section 198 of the Act are instructive in this regard.

Section 198 reads thus:

1. "Temporary employment services" means any person who for reward, procures for or provides to a client other persons-
  - a) who render services to, or perform work for the client, and
  - b) who are remunerated by the temporary employment service.
2. For the purposes of this Act, a person whose services have been procured for or provided to a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.

It is in view of the aforesaid provisions that the conclusion that the Applicant was not the Respondent's employee becomes unavoidable. In the absence of an employment relationship there can be no action founded on employment law between the parties.

## **AWARD**

1. There was no dismissal, at least not at the instance of the Respondent. As it stands the dispute falls outside Council's jurisdiction.



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Joseph Mphaphuli

PHSDSBC Panelist

Signed 26 November 2011